

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

KARIM SHERALI MAMDANI,	§	
STEP N GO CONVENIENCE STORE,	§	
Plaintiff,	§	
	§	
v.	§	No. SA-20-CV-01408
	§	
RICH PROULX, in his official capacity	§	
as Administrative Review Officer for the	§	
United States Department of	§	
Agriculture	§	
Defendant.	§	

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. § 1442(a), the United States of America, acting by and through the United States Department of Agriculture (“USDA”), hereby removes to the United States District Court, Western District of Texas, the above-captioned case, currently docketed as Civil Action No. 2020CI22154 in the District Court of Bexar County, Texas (“State Court Case”).

In support of removal, the USDA submits the following:

1. On November 13, 2020, Plaintiff filed a Complaint in state court, attached hereto as part of Exhibit 1. The USDA has not been properly served with the Citation or Complaint pursuant to Federal Rule of Civil Procedure 4(i) or 7 U.S.C. § 2023(a)(14). Trial has not been set or held.

2. In the Complaint, Plaintiff alleges that Rich Proulx, in his official capacity as Administrative Review Officer for the USDA, (“Proulx”) withdrew authorization for his convenience store to participate in the Supplemental Nutritional Assistance Program (“SNAP”)

due to not meeting certain USDA requirements and requests the Court restore Plaintiff's authorization to participate in SNAP. *See* Exhibit 1 at 4.

3. The State Court Case is removable under 28 U.S.C. § 1442(a)(1) because the USDA has been sued by Plaintiff for actions allegedly taken by employees in their official capacity, or for or relating to an act by employees under color of their office. Accordingly, federal court is the proper forum for this suit.

4. This notice of removal meets the 30-day deadline in 28 U.S.C. § 1446(b) as it is being filed less than 30 days after the filing of the Complaint in this case. Furthermore, the USDA maintains and reserves all defenses with respect to defects in the service of process. Here, neither the official or agency whose order is being attacked or the USDA Secretary, or his designee, have been served with the Summons or Complaint as required by 7 U.S.C.A. §2023(a)(14). *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (time to remove is not triggered until the defendant is formally served with process, even if the defendant receives a copy of the plaintiff's complaint through informal channels before that time); *Quality Loan Service Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635 F.3d 1128, 1133 (9th Cir. 2011) (holding that plaintiff's notice to federal government was insufficient to constitute formal process and thus did not trigger 30-day period for federal government to remove state court action, where plaintiff had not served the complaint upon the United States attorney or sent copies of process and complaint by registered or certified mail to the Attorney General). But, in any event, this Notice is timely under 28 U.S.C. § 1446(b).

5. The State Court Case is removable to this Court as “the district court of the United States for the district and division embracing the place wherein . . . [the State Court Case] is pending.” 28 U.S.C. § 1442(a).

6. Pursuant to 28 U.S.C. § 1446(a), the USDA attaches hereto copies of all State Court Case pleadings, orders and other state court filings received requested from the Bexar County, Texas Clerk of District Court, including:

- a.* Exhibit 1: Original Complaint with Exhibits A & B;
- b.* Exhibit 2: Citation;
- c.* Exhibit 3: Request for Service;
- d.* Exhibit 4: Executed Citation; and
- e.* Exhibit 5: Pro Se Acknowledgement.

7. In addition, the USDA may raise federal defenses to the Complaint.

8. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 73rd District Court in Bexar County, Texas.

9. Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as Exhibit 6.

10. As this federal case is being initiated via removal, a Supplement to JS 44 is attached hereto as Exhibit 7.

11. For the reasons stated above, the State Court Case is subject to removal to the United States District Court for the Western District of Texas.

WHEREFORE, the USDA hereby gives notice of removal of the State Court Case from the 73rd District Court for Bexar County to the United States District Court for the Western District of Texas.

Respectfully submitted,

Gregg N. Sofer
United States Attorney

By: /s/ Kristin K. Bloodworth

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Attorneys for USDA

CERTIFICATE OF SERVICE

I certify that on December 10, 2020, I sent a true and correct copy of the foregoing Notice of Removal by mail to:

Karim Sherali Mamdani,
C/o Step N Go Convenience
3532 Hunt Lane
San Antonio, Texas 78227

/s/ Kristin K. Bloodworth

Kristin K. Bloodworth
Assistant United States Attorney